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**THE HONOURABLE SHRI JUSTICE K.C. BHANU**

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**WRIT PETITION NO.20310 OF 2001**

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**AUGUST 8, 2005**

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**Between:**

Kotteda Nageswara RaoS/o Chinnavva,

Aged 30 years R/o D.No.44-11-57,

Bosebommas Street, Annapurnapeta,

Rajahmundry, E.G. District. .

…Petitioner.

And

The Industrial Tribunal-cum-Labout Court,

Visakhapatnam and others.

…Respondents

**THE HONOURABLE SHRI JUSTICE K.C.BHANU**

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**WRIT PETITION NO.20310 OF 2001**

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**ORAL ORDER:**

This writ petition is filed seeking a writ of mandamus declaring the orders passed by the 1st respondent in the Industrial Dispute No.156 of 1999 dated 4.6.2001 published vide G.O.Rt.No.1674 dt.9.7.2001 as illegal, arbitrary and further direct the respondents to treat the service of the petitioner from 1.3.1994 as continuity of service on Daily Wage/NMR basis and pass such other and further order or orders.

The brief averments of the writ petition are that the petitioner joined as NMR Pipeline Cleaner in Water Works Department of the Rajahmundry Municipality on 1.2.1992 on a daily wage of Rs.26/- . Since the time of his joining he worked continuously as such till 17.2.1996 and he is a permanent workman as per Section 2 (s) of the Industrial Disputes Act, 1947. On 10.4.1996 he made a representation to the authorities for the change of his services from Daily Wager to Contract Worker and the authorities though gave a promise to do so, they failed to fulfill it. The 2nd respondent for reasons best known and without any information engaged the third

respondent as a Contractor and the salaries are being paid through him. Though the 3rd respondent was termed as Contractor the procedure as contemplated in Contract Labour Regulation and Abolition Act has not been followed and in fact before converting his services from Daily Wage/NMR to Contract Labour they have not followed the provisions of Section 9 (a) of the Industrial Disputes Act, 1947. Having found no other alternative, except to approach the 1st respondent, he filed case before the 1st respondent-Tribunal. In spite of the admission of the management in the deposition, that he worked on daily wage basis till 17.2.1996 and had put in more than 240 days within one calender year, the 1st respondent on a wrong assumption dismissed the case.

No counter has been filed by the respondents.

The learned counsel for the petitioner contended that the petitioner was a daily wage employee appointed by the 2nd respondent-Municipality, that he worked as such from 1992 to 1996, that without following the procedure u/s 25 (F) of the Industrial Disputes Act, 1947, the services of the writ petitioner were to be terminated, that even the evidence of W.W.1 would go to show that after completing 89 days of work the 2nd respondent-Municipality used to give break of one or two days though he worked for more than 240 days in a calendar year and that there is no distinction between daily wage

employees and regular employees and the 2nd respondent-Municipality is bound to follow Section 25 (F) of the Industrial Disputes Act,1947. To substantiate this contention he relied on various decisions.

On the other hand, the learned counsel for the respondents contended that the second respondent used to engage the petitioner as a coolie on daily wage whenever there is work and that he has not been engaged for more than 240 days in any calendar year so as to follow the procedure u/s 25 (F) of the Industrial Disputes Act, 1947, that after 1996 the petitioner is working under the third respondent-Contractor and that there is no employee and employer relationship between the petitioner and the second respondent and, as such, there are no grounds to interfere with the order impugned in this writ petition.

There cannot be any dispute that in exercising the jurisdiction under Article 226 of the Constitution of India this Court can interfere with the findings of the 1st respondent-Tribunal when they are not based on any evidence or that the findings are perverse. The learned counsel for the petitioner contended that even W.W.1 admitted that the petitioner worked for a continuous period of 89 days and that thereafter there was a break of one or two days. The specific stand taken by the petitioner in his application is that he was in continuous service from 1.2.1992 to 17.2.1996 and, therefore, he comes within the meaning of 'Workman' u/s 2 (s) of the Industrial Disputes Act, 1947. As a matter of fact, the petitioner also gave evidence before the 1st respondent-Tribunal that he worked continuously as NMR from 1.2.1992to 17.2.1996. Under Section 2 (s) of the Industrial Disputes Act, 1947, 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed,

discharged or retrenched in connection with or, as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. One of the conditions prescribed if a person engaged for more than 240 days continuously in a year as required u/s 25 (B) of the Industrial Disputes Act,1947, is the issue involved in this case.

It may be a fact that after 1996 the workman-petitioner was appointed by the third respondent-Contractor as a contract labour. So after 1996 there cannot be any employee and employer relationship between the petitioner and the 2nd respondent-Municipality. The issue with regard to the work of 240 days continuously in between 1992 and 1996 has not been considered by the 1st respondent-Tribunal. Without considering the issue involved with reference to the evidence adduced by the parties it can be said that there is total non-application of mind by the 1st respondent-Tribunal. Hence, the order passed by the 1st respondent-Tribunal is perverse. The learned counsel for the petitioner placed reliance on several decisions with regard to the burden of proof and the definition of 'retrenchment' etc. It is unnecessary to go in to that aspect since the issue of continuity of work of 240 days by the petitioner from 1992 and 1996 has not been dealt with by the 1st respondent-Tribunal, which requires any consideration.

Hence, the order of the 1st respondent-Tribunal is set aside and the matter is remitted to the 1st respondent-Tribunal for giving appropriate findings based on the findings available.

The writ petition is allowed accordingly. Since the issue relates to the years 1996 the 1st respondent-Tribunal is directed to

dispose of the matter within two months from the date of receipt of copy of this order. No order as to costs.

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Dt.08.08.2005 K.C. BHANU, J

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